



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2009 Biennium

<b>Bill #</b>	SB0551	<b>Title:</b>	Tax holiday for coal severance tax on coal used CO2 sequestration facilities
<b>Primary Sponsor:</b>	Bales, Keith	<b>Status:</b>	As Introduced

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|---|---|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input type="checkbox"/> Needs to be included in HB 2             | <input checked="" type="checkbox"/> Technical Concerns   |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<u>FY 2008 Difference</u>	<u>FY 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>
<b>Expenditures:</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Net Impact-General Fund Balance:</b>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

#### Description of fiscal impact:

The proposed bill establishes temporary and permanent reductions in the coal severance tax rate for producers who send coal to facilities that sequester at least 75% of the carbon dioxide produced at that facility. The technology for significant carbon dioxide sequestration is not yet in place, hence the expenditure and revenue impact projected through FY 2011 is zero. However, the long term expenditure and revenue impacts might be very significant.

### FISCAL ANALYSIS

#### Assumptions:

1. Proposed law is effective on October 1, 2007; and applicable to production after September 30, 2007.
2. The projected number of coal processing facilities that would meet the 75% sequestration requirement and purchase coal from Montana producers is zero through June 2011.
3. Since no coal producers are projected to be eligible for tax exemptions through June 2011, the projected fiscal impact of proposed law in FY 2008 through FY 2011 is zero.

**Effect on County or Other Local Revenues or Expenditures:**

1. Coal severance taxes are distributed 5.46% to a state special revenue account to provide basic library services for county residents, for the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act.
2. Coal severance taxes are distributed 2.90% to the oil, gas, and coal natural resource state special revenue account established in 90-6-1001, MCA. Under current practice, the legislature appropriates this money to the Coal Board to fund grants to local governments, state agencies, and federally recognized Indian tribes.

**Long-Range Impacts:**

1. The rate adjustment procedure in Section 1, subsection (4)(b) implies that participating coal producers would be eligible for permanent coal severance tax rate reductions of up to 50% of current law rates, in addition to the three and five year exemptions for sale to conforming facilities.

**Technical Notes:**

1. Proposed law does not clearly specify which agency will be responsible for ensuring that coal processing facilities meet the sequestration requirements and that coal from Montana producers is actually used in these facilities. Future administrative expenditures to the Department of Revenue might be very significant, if extensive compliance efforts will be required to implement the bill.
2. The Department of Revenue will be unable to administer this bill as written.
3. This bill raises constitutional issues and invites re-litigation of “Commonwealth Edison” with potential loss of coal severance taxes because of facial discrimination in favor of Montana providers, contrary to the Commerce, Privileges and Immunities Clauses.
4. “Sequester” is not defined in Title 15, chapter 35, MCA. The current level of technology suggests that several different methods might be used to sequester carbon dioxide, including geologic, mineral, oceanic, and terrestrial sequestration. Proposed law will require substantial rulemaking to define acceptable sequestration, how sequestration will be measured, and how compliance will be ensured. The rules adopted may not concur with legislative intent.
5. “Year” and “years” are used throughout Section 1, subsection (4)(b). These terms are not defined.
6. Section 1, subsection (4)(a)(i) states that the first five years of production from a new mine is not subject to taxation if at least 50% of the coal produced by the mine is used in the state in facilities that sequester at least 75% of the carbon dioxide produced at the facility. The coal severance tax is paid quarterly. Are the tax exemptions to be granted by quarter, annually, or after five years? If in some quarters, during the first five years of production from a new mine less than 50% of the production from the mine is used in a conforming facility, but in aggregate over the five years at least 50% of production is used in such a facility, would all of the production over five years be exempt?
7. How will a taxpayer know that coal they sold to a conforming facility is actually being used by that facility? For instance, a conforming facility might buy coal at a discount from a mine seeking an exemption and resell the coal at a profit to a non-conforming facility. How would the state monitor these transactions for audit purposes?
8. Section 1, subsection (4)(a)(ii) states that three years of new production from an existing mine is not subject to taxation if the coal is used in the state in facilities that sequester at least 75% of the carbon dioxide produced at the facility. If an existing mine sends only a portion of its coal to a conforming facility in the first three years, is the exemption to be:
  - a) pro-rated for three years according to the percentage sent to a conforming facility,
  - b) applied only to production sent to a conforming facility, until the total tonnage of exempt coal equals the three years of total production beginning the first year of exemption, or
  - c) applied in some other fashion?

9. If the exemption period for an existing mine referred to in subsection (4)(a)(ii) is three concurrent years, when does this three year period begin?
10. Section 1, subsection (4)(a)(iii) states that the first three years of production from a new mine is not subject to taxation for coal used out of the state in facilities that sequester at least 75% of the carbon dioxide produced at the facility. If a mine sends 60% of its production to a foreign conforming facility, and 40% of its production to a Montana conforming facility, will only 60% of production be exempt?
11. If production is intermittent in a mine, how would the exemption period be calculated? For instance, if a new mine does not produce coal in the year following its first year of production, would this year count in calculation of its exemption period?
12. The first sentence in Section 1, subsection (4)(b) reads “Each time production that was exempt pursuant to subsection (4)(a) becomes taxable, the department shall adjust the rates in subsection (1).” Coal production is exempt, or it is taxable. Coal production cannot “become taxable” except through correction of error in original classification.
13. The second sentence in Section 1, subsection (4)(b) reads “For each year that the production was exempt, the department shall determine a rate that, when applied to the number of taxed tons of coal and the number of tons of coal that were not taxed under the expired exemption, would have resulted in the same tax revenue.” If during the specified period a mine was eligible for exemption, production from the mine was not used in a conforming facility in one year, and thus production was not exempt in that year, would production in that year be disregarded for purposes of calculating the adjusted tax rate?
14. Assuming that exemptions are to be granted quarterly and that a new mine sends at least 50% of its production in the first quarter of its first year to a conforming facility, and that in the second quarter of its first year of production it sends less than 50% of its production to a conforming facility, then would the mine be eligible for an adjusted tax rate because production that was previously exempt is now taxable? If so, then a new mine might send at least 50% of its production to a conforming facility for just one quarter, yet be eligible for a *permanent* 50% reduction in its coal severance tax rate.

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*Sponsor's Initials*

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*Date*

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*Budget Director's Initials*

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*Date*